

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4714

IN THE MATTER OF:

Served December 5, 1995

Application of CAPITAL TOURS & )  
TRANSPORTATION (VIRGINIA), INC., )  
for a Certificate of Authority )  
-- Irregular Route Operations )

Case No. AP-95-48

By application filed October 13, 1995, Capital Tours & Transportation (Virginia), Inc., a Virginia corporation, seeks a certificate of authority to transport passengers, together with mail, express and baggage in the same vehicles as passengers, in irregular route operations between points in the Metropolitan District, restricted to transportation in vehicles with a manufacturer's designed seating capacity of 15 or fewer persons, including the driver. Applicant is under common control with Capital Tours & Transportation Inc., a Maryland corporation trading as Suburban Airport Shuttle, WMATC Carrier No. 224.

Notice of this application was served on October 18, 1995, in Order No. 4686, and applicant was directed to publish further notice in a newspaper and file an affidavit of publication. Applicant complied. The application is unopposed.

SUMMARY OF EVIDENCE

The application includes information regarding, among other things, applicant's corporate status, facilities, proposed tariff, finances, and regulatory compliance record.

Applicant proposes commencing operations with two vans. Applicant's proposed tariff contains hourly group charter rates and per capita airport rates.

Applicant filed a balance sheet as of September 30, 1995, showing assets of \$27,500; liabilities of \$29,500, including \$4,000 payable to applicant's president/sole shareholder; and negative equity of \$2,000. Applicant's projected operating statement for the first twelve months of WMATC operations shows WMATC revenue of \$24,500; other revenue of \$46,000; costs and expenses of \$65,350; and net profit of \$5,150.

Applicant certifies it has access to, is familiar with, and will comply with the Compact, the Commission's rules and regulations, and United States Department of Transportation regulations relating to transportation of passengers for hire.

DISCUSSION AND CONCLUSION

This case is governed by the Compact, Title II, Article XI, Section 7(a), which provides in relevant part that:

. . . the Commission shall issue a certificate to any qualified applicant . . . if it finds that --

(i) the applicant is fit, willing, and able to perform [the] transportation properly, conform to the provisions of this Act, and conform to the rules, regulations, and requirements of the Commission; and

(ii) that the transportation is consistent with the public interest.

Applicant's negative equity position stems in substantial part from classifying start-up capital as debt instead of equity. Applicant operates in Virginia under authority issued by the Virginia State Corporation Commission. Applicant is projecting net income in its first twelve months of WMATC operations. We have found other applicants financially fit under similar circumstances.<sup>1</sup>

Based on the evidence in this record, the Commission finds applicant to be fit, willing, and able to perform the proposed transportation properly and to conform with applicable regulatory requirements. The Commission further finds that the proposed transportation is consistent with the public interest.

Because applicant is under common control with Carrier No. 224, this case also is governed by Title II, Article XII, Section 3(a)(iii),<sup>2</sup> which provides that a "carrier or any person controlling, controlled by, or under common control with a carrier shall obtain Commission approval to . . . acquire control of another carrier that operates in the Metropolitan District through ownership of its stock or other means." Under Section 3(c), the Commission may approve acquisition of control if it is consistent with the public interest. The public interest analysis focuses on the acquiring party's fitness, the interests of affected employees, the net benefits to the riding public and the resulting competitive balance.<sup>3</sup>

A presumption of fitness arises where the acquiring party controls another WMATC carrier previously found fit.<sup>4</sup> Applicant's employees have an interest in seeing their employer obtain valuable new operating rights, and there is no evidence that the employees of Carrier No. 224 will be substantially affected. Normally, the benefit to the riding public would derive from the potential for increased competition in the airport shuttle service market, which is

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<sup>1</sup> See eg., In re Jet Tours USA, Inc., t/a City Tours, Wash., D.C., No. AP-94-50, Order No. 4649 (Aug. 22, 1995) (loan from shareholder, projection of net income, ICC and NJDOT authority); In re Escort Transport, Inc., No. AP-95-22, Order No. 4628 (July 7, 1995) (loan from shareholder).

<sup>2</sup> In re Capital City Limo., Inc., No. AP-95-09, Order No. 4552 (Mar. 31, 1995).

<sup>3</sup> Order No. 4552 at 2.

<sup>4</sup> In re Executive Sedan Mgmt. Servs., Inc., t/a Washington Car & Driver, No. AP-94-26, Order No. 4354 (Aug. 1, 1994).

presumptively in the public interest, but here the prospect of commonly controlled carriers possessing overlapping authority calls for heightened scrutiny with regard to the resulting competitive balance.<sup>5</sup>

The Commission evaluates common control of duplicate authority on a case-by-case basis.<sup>6</sup> In this case applicant explains that its intra-Virginia customers have begun requesting service between the Virginia airports and other points in the Metropolitan District. If the application is approved, applicant will concentrate on serving customers in Northern Virginia while applicant's affiliate will concentrate on serving customers in the Maryland suburbs. There will be no sharing of facilities, equipment or employees. There will be some overlap in service areas, however, as a comparison of applicant's proposed rates with its affiliate's general tariff reveals. We have approved such intrabrand competition in the past and see no reason to disapprove it here.<sup>7</sup> Accordingly, we find the proposed transaction consistent with the public interest.

THEREFORE, IT IS ORDERED:

1. That Capital Tours & Transportation (Virginia), Inc., 100 Executive Drive, Suite 102, Sterling, VA 20166, is hereby conditionally granted, contingent upon timely compliance with the requirements of this order, authority to transport passengers, together with mail, express and baggage in the same vehicles as passengers, in irregular route operations between points in the Metropolitan District, restricted to transportation in vehicles with a manufacturer's designed seating capacity of 15 or fewer persons, including the driver.

2. That applicant is hereby directed to file the following documents with the Commission: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 4203; (b) an original and four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) an equipment list stating the year, make, model, serial number, vehicle number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) evidence of ownership or a lease as required by Commission Regulation No. 62 for each vehicle to be used in revenue operations; (e) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia; and (f) a notarized affidavit of identification of vehicles pursuant to Commission Regulation No. 61, for which purpose WMATC No. 327 is hereby assigned.

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<sup>5</sup> Order No. 4552 at 4.

<sup>6</sup> Order No. 4552 at 4.

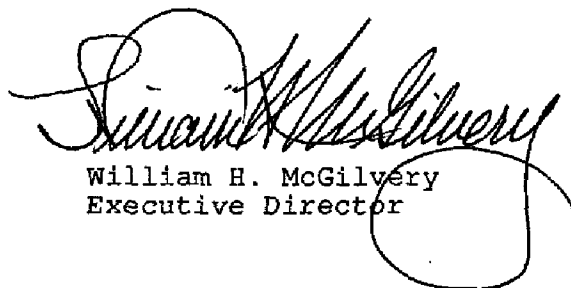
<sup>7</sup> See In re Franklin Charter Bus, Inc., & Franklin Motorcoach, Inc., No. AP-95-02, Order No. 4509 (Mar. 1, 1995) (approving common control of three independently operated WMATC carriers).

3. That upon timely compliance with the requirements of the preceding paragraph and acceptance of the documents required by the Commission, Certificate of Authority No. 327 shall be issued to applicant.

4. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until a certificate of authority has been issued in accordance with the preceding paragraph.

5. That unless applicant complies with the requirements of this order within 30 days from the date of its issuance, or such additional time as the Commission may direct or allow, the grant of authority herein shall be void and the application shall stand denied in its entirety effective upon the expiration of said compliance time.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS ALEXANDER, LIGON, AND SHANNON:



William H. McGilvery  
Executive Director